STATE OF MICHIGAN

COURT OF APPEALS

In re JOYNER/PETTWAY, Minors.

UNPUBLISHED
June 16, 2015

No. 325263
Oakland Circuit Court
Family Division
LC No. 14-824057-NA

Before: STEPHENS, P.J., and BORRELLO and GADOLA, JJ.

PER CURIAM.

Respondent appeals as of right the order exercising jurisdiction over her children pursuant to MCL 712A.2(b). We affirm.

Respondent argues that the trial court's decision to exercise jurisdiction over her children should be reversed by this Court. Respondent argues that while she may need mental health services, the Department of Human Services (DHS) did not establish that her mental health issues affected her parenting. We disagree.

"We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

"Child protective proceedings have long been divided into two distinct phases: the adjudicative phase and the dispositional phase. The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b)." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006) (internal citations omitted). "The dispositional phase involves a determination of what action, if any, will be taken on behalf of the child." *Id.* at 537.

Much like there are two phases of child protective proceedings, adjudication and disposition, there are two phases in child protective services involvement: investigation and court intervention. Just as the court cannot reach the dispositional phase without properly asserting jurisdiction in the first instance, DHS cannot petition the court for jurisdiction without

complying with the laws governing investigation. In an effort to make this appeal easier to process, the laws governing investigations and court involvement will be briefly outlined.

When conducting an investigation, DHS is guided by the Child Protection Law, MCL 722.621 *et seq*. MCL 722.628 sets forth the framework for DHS's investigation responsibilities, including cooperating with police, schools, hospitals, and Friend of the Court. "In the course of its investigation, the department shall determine if the child is abused or neglected." MCL 722.628(2). The Child Protection Law defines abuse and neglect at MCL 722.622(f) and (j). Child abuse is defined as:

> (f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

Child neglect is defined as:

> (j) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:
>
> (*i*) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
>
> (*ii*) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

After the investigation under MCL 722.628, DHS then determines a response, which requires DHS to conclude which of five categories that a case should fall within. For a category V case, DHS concludes that services are not needed, that there is no evidence of child abuse or neglect. MCL 722.628d(1)(a). For a category IV case, DHS finds that there is a future risk to the child and recommends community services. MCL 722.628d(1)(b). For a category III case, DHS determines that there is abuse or neglect of a child, but the risk of future abuse is only moderate. Community services are needed and DHS assists with services; services at this level are not considered optional. MCL 722.628d(1)(c). For a category II case, the DHS determines that there is evidence of child abuse or neglect, that there is a high risk of future harm to the child, and a protective services case is opened. MCL 722.628d(1)(d). For a category I case, a court petition is required. MCL 722.628d(1)(e).

When DHS determines that a child is not safe and removal is needed, a petition with the court is required under the law. MCL 722.628d(1)(e)(ii). Once a case has been categorized as category I, DHS is required to submit a petition for authorization with the court under MCL 712A.2, open a protective services case, and list the perpetrator of abuse or neglect on the central registry. MCL 722.628d(2); MCL 722.627.

The Juvenile Code sets forth the statutory framework for when a matter can be brought to the court's attention, with a request for court intervention. In relevant portion, MCL 712A.2(b) states:

> The court has the following authority and jurisdiction:
>
> * * *
>
> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
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> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.
>
> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

On September 19, 2014, DHS filed a petition requesting that the court exercise jurisdiction over respondent's children under MCL 712A.2. The petition alleged that respondent was suffering from paranoia and confused perceptions. DHS alleged that respondent's conduct put her children at risk of harm, such that a basis for the court to assert jurisdiction existed.

A bench trial was conducted over two days, with testimony from DHS, an emergency room physician, respondent's adult daughter, and respondent. The assigned child protective services worker (CPS) testified that four referrals had been received regarding the respondent's family. The first two referrals were filed around the time of KP's birth in March 2013 and related to that child only. The first referral alleged that respondent was paranoid and did not want to sign the child's birth certificate. The second referral alleged that respondent had not returned with the child for the follow-up visitation with the doctor. During the course of the investigation, respondent did take KP to the doctor, so the matter was closed as a category IV case. In August 2014, the third referral was submitted to DHS, alleging improper supervision of

all of the children. The fourth and final referral was received in September 2014, alleging concerns for the children's safety, following respondent's visit to the hospital with the children.

CPS had a difficult time conducting the investigation regarding the August referral. CPS made seven attempts to meet with respondent. On the final attempt, respondent threatened to have the CPS worker arrested for DHS impersonation. CPS typically receives 30 days to conduct an investigation, but an extension was requested in this matter. The decision was made to wait until the older children (TJ, aged 12, and AJ, aged 14) enrolled in school so that they could be interviewed at school. On September 16, 2014, two CPS workers met with the children at their schools for "maybe 15 minutes" each. AJ shared that sometimes, he was fearful because respondent "will confront people." AJ believed respondent was paranoid, that she would hear things he did not hear. TJ said that respondent believed people were stealing her child support checks. TJ said that respondent believed people were telling her things that TJ never heard.

The day after CPS spoke with the children at school, respondent took the children to the hospital, concerned that fake CPS workers came to the house and what they might have done to her children. The emergency room physician met with respondent and used a telephone number that she had independently for DHS in order to see if this was real or fake; "I wanted to give her the benefit of the doubt . . . so I called CPS." DHS confirmed that this was a real investigation, a real case. Thinking respondent would be reassured to know that fake workers were not speaking to her children, the physician spoke with respondent and shared that it was a real case, a real person. At that point, respondent became "very angry," "very mad," "yelling." Respondent "accused us of being janitors and that I wasn't really a doctor." "She became very tangential . . . saying I've worked in medicine before." Respondent accused the physician of lying and said "you're the one who filed the CPS case and you're making this up." All of this was occurring in the emergency department, with just curtains between respondent and other patients. "People next to us were like – oh my God, what's going on – this woman is like hysterical and, and yelling and calling us janitors and saying we're not really doctors and we don't know what we're doing and she knows, she's been in medicine and she knows what she's doing."

Even after the physician assured respondent that the protective services worker was not fake, respondent wanted the hospital to conduct tests to see if her children had been harmed. Respondent wanted genital examinations done of the three children (aged 14, 12, and 1) and was upset the doctor did not look "at their poodies." Fourteen-year-old AJ was shaking his head and saying, "no one touched me." Additionally, respondent had requested a CT scan to see if "they took their organs." The children had "no scars or no complaints, no tenderness, no bruising, nothing physical." At that point, the physician "went from . . . she's just upset . . . to there may be a disconnect between reality and actual."

The crux of the testimony received at trial was that respondent was behaving in a delusional and erratic matter, such that the safety of the children could not be ensured. While SJ, respondent's 19-year-old daughter, attributed this behavior to respondent's recent pregnancy with KP, the testimony was that respondent's behavior was not improving during the time that had passed since KP's birth in March 2013. Instead, the behaviors were worsening.

The court found that the children came within the provisions of the Juvenile Code, under MCL 712A.2(b)(1) and (2). "Jurisdiction must be established by a preponderance of the

evidence." *In re BZ*, 264 Mich App at 295 (citations omitted). The court found that the statutory bases for exercising jurisdiction over the children were established by a preponderance of the evidence and included that the children were at a substantial risk of harm to their mental well-being and that there was an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent.

The Juvenile Code provides that the court has authority and jurisdiction over a child under the age of 18 "who is subject to a substantial risk of harm to his or her mental well-being." MCL 712A.2(b)(1). The testimony regarding respondent's behaviors was not limited to her temper with and toward other adults, as respondent attempts to argue to this Court. The testimony included how that behavior was directly impacting the children. AJ and TJ were both protective of respondent, even though both described her as hearing voices they did not hear. However, when respondent took the children to the hospital, demanding that they have genital, i.e. "rectal," "vaginal," examinations, the effect on the children was such that they were visibly upset. The physician testified that they were shaking their heads, "their body language," saying "no one touched me." The teenaged children "had verbalized . . . There was nobody hurting them." In the physician's opinion, "they were embarrassed . . . they did not want to have their privates looked at."

In addition, respondent wanted the children to have CAT scans. "She questioned if there's something we could do like a CAT scan to see if there was [sic] organs taken when obviously there was [sic] no organs taken, there was no scar, there's no healing, they, [sic] there's, there's nothing, there's no tenderness." The physician was very concerned another medical provider might have acquiesced to respondent's demands. "That would be detrimental to the children" to receive so much radiation with no scars, complaints, tenderness, bruising, or other physical sign to warrant such testing. "One was just a baby and so if I did a CAT scan just because she wanted me to do a CAT scan, then she'd get a ton of radiation and increase her lifetime risk of cancer."

"In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea." *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). In issuing its findings at the close of the proofs, the court acknowledged being aware that respondent "has never been diagnosed with a mental illness." "The testimony is very concerning that indicates that something is not right. We have an ER doctor who says mom was concerned that her children's organs were being taken." Additionally, the court was concerned that respondent wanted "all of her children's genitalia" examined, when no one said a word about the children being sexually assaulted, and with the children "denying anything happened to them." The court found these behaviors, in addition to respondent's paranoid rantings, posed a risk "minimally to the children's mental health." The court's findings that the children were subjected to a substantial risk of harm to their mental well-being were not in error.

While the court only needs to find one statutory basis exists for asserting jurisdiction, the lower court also found that the children came within the provisions of the Juvenile Code as they were subjected to an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent. Respondent argues to this Court that she was a good parent, meeting her children's needs, and that her mental health concerns were not

preventing her from parenting her children. She describes herself as over-protective, not neglectful or abusive. The LGAL disagrees, and argues to this Court that respondent's paranoia and mental health issues do affect her ability to care for the children. The LGAL did not wish to speculate on whether respondent's pregnancy exacerbated her mental illness or if she was suffering from post-partum depression, but the LGAL did argue, "her untreated mental health issues and inability to listen to her children or anyone else created an [sic] home that was not a fit place for her children to live." The LGAL advocates to this Court that respondent's ability to properly parent was compromised because of her illness and refusal to listen to the children. The physician shared a similar concern when testifying that respondent wanted a genital examination done on KP – even though protective services did not have access to KP and the older children consistently maintained that no one touched them. While AJ was old enough to repeatedly state he had not been touched, KP was not old enough to protect herself.

The court received into evidence records surrounding respondent's pregnancy with KP, before her birth. There is a note from respondent's visit to the hospital on October 11, 2012, where respondent "was found to have a score of 16 on the EPDS."[1] The note goes on to read: "A social worker had attempted to contact her on multiple occasions. When asked, the patient stated she was not depressed and *did not want or need any further intervention*." CPS testified at trial, over two years later, that *they were unable to involve respondent in any services*. The DHS, the LGAL, the trial court, and even respondent agree that respondent could benefit from mental health services. Until those services were in place and respondent's behaviors improved, the trial court found that the home environment was unfit. That finding does not leave this Court with a definite and firm conviction that a mistake was made.

We affirm.

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Michael F. Gadola

[1] EPDS is the Edinburgh Postnatal Depression Scale. The maximum score is 30. Possible depression is noted for a score of 10 or higher. On the key that accompanies the scale, "Mothers who score above 13 are likely to be suffering from a depressive illness of varying severity." University of California, San Francisco, http://www.fresno.ucsf.edu/pediatrics/downloads/edinburghscale.pdf (accessed April 22, 2015).